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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

LEIHA DOLORES FEDERICO,

Defendant and Appellant.

G042986

(Super. Ct. No. 08HF2272)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, M. Marc Kelly, Judge. Affirmed.

John L. Dodd, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

* * *

Charged with first degree robbery (Pen. Code, §§ 211/215, subd. (a)), assault with a deadly weapon (knife) (Pen. Code, § 245, subd. (a)(1)), and a misdemeanor count of child endangerment (Pen. Code, § 273a), appellant Leiha Federico was convicted by a jury of the robbery, simple assault, and child endangerment. The trial court suspended her sentence and placed her on formal probation for a term of three years, with one of her conditions of probation being that she serve 365 days in the Orange County jail; she was given credit for 211 days actually served and 105 conduct credit days, leaving her 49 days to serve.

We appointed counsel to represent appellant on appeal. While not arguing against appellant he filed a brief which set forth the facts of the case and advised us he was unable to find an issue to argue on appellant's behalf.

We informed appellant she had 30 days to file written argument in her own behalf. No such communication was filed. We have reviewed the record of appellant's trial and find ourselves in agreement with her trial counsel: There is no arguable error in the proceedings against appellant. (*People v. Wende* (1979) 25 Cal.3d 436.)

STATEMENT OF FACTS

Appellate counsel, in keeping with his duties under *Anders v. California* (1967) 386 U.S. 738 and *People v. Wende, supra*, 25 Cal.3d 436, has provided us a detailed statement of facts. We are unable to find any significant error or omission in that statement of facts and therefore, in the interest of judicial economy, adopt it for our opinion:

A. The Prosecution Case

Jacob Hernandez was filling his gas tank at an ARCO station in Costa Mesa at about 3:30 p.m. on November 25, 2008, when Federico spoke to him, asking "what's happening?" He had not seen her before that day. She said she was working, so he asked, "What kind of work?" to which she replied "that she was working kind of like a

prostitute.” Hernandez said he did not have money, so she asked “How much do you have?” and he responded, “\$20.” Federico said that was fine.

Federico said she had a hotel close by. Hernandez said he would meet her there later, but she just stayed and then got in his car when he was done filling it with gas. He drove to the motel, and entered the room, at which point he noticed a baby sleeping on the bed, which awoke when the[y] entered. He gave her the \$20, but she wanted more money. He told her he did not have any more so “she called a person like ‘Nick, Nick,’ or something like that. And he came out running and he charged me and he told me ‘How come that you don’t have anymore money?’” Hernandez identified defendant Johnson as the man in the room.

Hernandez testified Johnson had a knife in his hand and “came out fast and charged me,” taking Hernandez’s money from his wallet and pushing him towards the outside. Hernandez testified Johnson cut his hand when he tried to protect his wallet, and his pocket was torn. Johnson took his money but returned the wallet. Hernandez left and called the police.

Officer William Adams of the Costa Mesa Police Department was a training officer, training a new officer, Jodi Schmidt on November 25. Between 3:30 and 4:00 p.m. he was dispatched to the corner of Ford and Newport Boulevard to meeting the victim of a possible robbery. They located Hernandez, and Schmidt interviewed him. Adams noticed Hernandez had a small cut on his hand, which was bleeding, and his pant pocket was torn. Schmidt testified Hernandez told her his pocket had been torn because “he was trying to put his or keep his hand in his pocket where his wallet was and the defendant was pulling it and as he was pulling it ripped his pants.”

Another officer came to stay with Hernandez, while Adams and Schmidt went to the Sandpiper Motel. Adams looked through the window of the room Hernandez had identified, saw the defendants, and ordered them to come out, which they did. They searched the room, locating a knife. Other than the baby, no one else was in the room.

Officer Schmidt was new to the Costa Mesa Police Department, on patrol with Adams when the incident occurred. She saw money partially hanging out of Johnson's pants pocket, retrieving it.

Adams spoke with Federico, recording the conversation with the digital audio recorder on his belt. Schmidt testified they interviewed Federico first, "to find out what the situation was, what had happened at the hotel." Federico told them Hernandez first "asks me for a joint" then said "he had a business and that he was going to offer me a job." She then asked him to go back with her and meet her boyfriend and baby. Federico told the officers that, once inside the motel room, Hernandez spoke to her in Spanish, and she told Johnson he was "'being sexual and he's saying sexual things,'" at which point Johnson told him to leave. There was a minor scuffle, and he left. She denied telling Hernandez she had offered him sex for money, as well as taking his money.

Schmidt testified Johnson was "uncooperative," so she told him something to the effect of "'If I can pin this on you, I will. How about that?'" She agreed that was a "bad choice of words" and claimed "It wasn't like I pinned something on him. That didn't occur."

The ARCO gas station at Newport and Bay Street where the encounter occurred has surveillance cameras. Hernandez appeared around 3:22, and Federico is visible about a minute later. Hernandez's van drives out about 3:30.

B. Defense Case

Federico testified on her own behalf. In November 2008, she had been living at the Sandpiper Motel with Johnson and their baby for about three weeks. Prior to that they were living with Johnson's sister at 18th and Placentia in Costa Mesa. She testified she had had about three short conversations with Hernandez prior to November 25 in the neighborhood where they had lived with Johnson's sister. On the 25th she had left the motel to make telephone calls at a pay phone in front of a liquor store at Bay and

Newport about 3:00 p.m. She was walking back near the gas station and mini mart when she saw Hernandez and had a short conversation with him. He offered her a ride home and, upon learning she had been using the phone to look for employment, informed her the business where he worked needed someone to answer telephones.

Federico rode with Hernandez back to her motel room, where they went inside to tell Johnson about the possible job offer. She denied telling him anything which could lead him to conclude she was working as a prostitute or saying anything about having sex for money. Johnson was standing in the bathroom when they entered. Hernandez sat at the table and “made a nasty comment about my chest.” Johnson asked what was wrong, and Federico told him to “just make him leave.” Johnson pushed Hernandez out the door. She denied Johnson was holding a knife and denied that Johnson took any money from Hernandez. She admitted she did have a prior misdemeanor conviction for stealing clothes from Mervyn’s in 2005.

On cross-examination, Federico denied standing around the gas station for 20 minutes. However, after viewing the video from the surveillance camera, she agreed she had been. She asserted she told the police she recognized Hernandez from before. However, after cross-examination, the parties stipulated she “never said she recognized the victim from any prior contact or that he was a friend or an acquaintance.”

DISCUSSION

The initial question in any criminal case is whether there is evidence to support the verdict. Counsel for appellant’s codefendant tried that avenue of approach, but he reached a very abrupt dead end. Appellant’s attorney appears to have recognized, as did cocounsel, and as have we, that there was no argument to be made there.

As this statement of facts makes clear, the trial was a credibility contest. The jury believed Hernandez.¹ It is axiomatic that the testimony of one witness, believed

¹

The jury returned the same verdict as to codefendant Johnson.

by the jury, is sufficient to support a verdict if not inherently incredible. There was nothing inherently problematic about Hernandez's testimony. Indeed, it would be a lot more difficult to explain why he would resist leaving the motel room if the facts were as related by Federico. The facts related by Hernandez made sense to the jury and we can find nothing to undermine their confidence in them. So there certainly seems to have been sufficient evidence to support the charges against appellant.

Nor was counsel able to find any infirmity in the jury instructions – the most fertile ground for error in cases such as this. We have reviewed the instructions and are likewise unable to find any flaw in them. Nor are we able to find sentencing error. We have reviewed the transcripts of the trial for other possibilities, but have come up empty.

The fact is this was not a complicated case. The facts were easily understood; it was just a matter of whose recounting of those facts the jury believed.

No error infected the trial or the sentencing. The judgment is therefore affirmed.

BEDSWORTH, J.

WE CONCUR:

SILLS, P. J.

IKOLA, J.